

## POOR LEGIBILITY

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE CITY OF PHOENIX,  
a municipal corporation,

Plaintiff,

vs.

MOTOROLA, INC.,  
a Delaware Corporation,

Defendant.

No. CV 89-18573

CONSENT DECREE AND  
SETTLEMENT AGREEMENT

1. Recitals

1.1 The Complaint filed by the City of Phoenix  
(hereinafter "Phoenix") alleges that Defendant, Motorola, Inc.,  
(hereinafter "Motorola") discharged industrial wastewater into the  
City's sewers which exceeded Motorola's Permit limitations and  
Chapter 28 of the Phoenix City Code.

1.2 The Complaint also alleges that as a result of  
discharging industrial wastewater exceeding allowable limits into  
the sewer system, Phoenix has suffered damages for which both legal  
and equitable relief is sought.

1           1.3 It is the desire of Phoenix and Motorola to resolve  
2 the pending Complaint and all disputes between them arising out of  
3 the allegations of the Complaint, together with all other disputes  
4 regarding the subject matter thereof, without further litigation.  
5 To that end, Phoenix and Motorola have entered into this Consent  
6 Decree and Settlement Agreement in order to resolve all disputes  
7 among them according to the terms, conditions and provisions hereof.

8           2. Provisions

9           2.1 All of the foregoing "Recitals" are incorporated by  
10 reference herein in the "Provisions" segment of this Consent Decree  
11 and Settlement Agreement, as though fully set forth herein.

12           2.2 The Court has jurisdiction of this matter and of the  
13 parties consenting thereto. The parties agree not to contest the  
14 jurisdiction of the Court to enter this Consent Decree and  
15 Settlement Agreement. The Complaint filed by Phoenix states a  
16 cause of action upon which, if the allegations were proved, relief  
17 can be granted against Motorola.

18           2.3 Entry of this Consent Agreement and Final Order is  
19 made without the adjudication of any issue of fact or law. It is  
20 hereby understood that the Findings of Fact and Conclusions of Law  
21 of this Consent Agreement and Final Order are made only to support  
22 the Court's Order and in no way constitutes an adjudication of any  
23 issue of fact or law or an admission of the Respondent.

24           . . .

25           . . .

26           . . .

1           2.4 Motorola admits only the jurisdictional allegations  
2 contained in the Complaint and denies the balance, and nothing in  
3 this Consent Agreement or Final Order shall be construed or  
4 interpreted as an admission of culpability or liability on the part  
5 of Motorola.

6           2.5 Motorola shall pay to Phoenix the sum of Forty-Six  
7 Thousand Six Hundred and Forty Dollars (\$46,640) as compensation  
8 for any and all damage suffered by Phoenix to its sewer system.

9           2.6 Phoenix shall accept payment in accordance to the  
10 following schedule as full payment of any and all claims arising  
11 out of Motorola's discharge into the sewerage system as stated in  
12 the complaint:

13                   One payment in the amount of \$46,640, paid within  
14                   sixty (60) days of the Judge's signature of this  
                    Consent Decree and Settlement Agreement.

15 Should payment not be made pursuant to this time schedule stated  
16 above, interest will accrue at a compound interest rate of eighteen  
17 per cent (18%) per annum and this debt shall be collectible in the  
18 same fashion as any other judgment debt arrived at by order of the  
19 Court, in addition to all remedies available under Chapter 28 of  
20 the Phoenix City Code, which includes the termination of sewer  
21 service until the indebtedness is satisfied.

22           2.7 Motorola shall, at its sole cost and expense,  
23 undertake and complete a compliance program, in the manner and  
24 within the time limits as set forth in the attached Exhibit A,  
25 which is incorporated herein by this reference and made a part of  
26 this Consent Decree. Beginning on July 25, 1989, and continuing

1 every month thereafter, Motorola shall deliver to Phoenix monthly  
2 progress reports indicating the status of progress under the  
3 compliance program.

4           2.8 Failure by Motorola to comply with any requirement in  
5 this Consent Decree shall require Motorola to pay a sum as and for  
6 stipulated damages in the amount of \$100.00 per day for as long as  
7 the non-compliance continues.

8           2.9 Phoenix acknowledges that this Consent Decree is full  
9 and complete satisfaction of any and all claims against Motorola  
10 and its affiliates, and their stockholders, directors, officers,  
11 employees, agents, assigns or successors in interest, and further  
12 declares and represents that no promises, inducements or agreements  
13 not herein expressed have been made to Motorola, and that this  
14 Consent Decree and Settlement Agreement contains the entire  
15 agreement between the parties hereto, and that the terms of this  
16 Decree and Agreement are contractual and not a mere recital.

17           2.10 If any event occurs which causes Motorola or may  
18 cause a violation of any provisions of this decree by Motorola,  
19 Motorola shall notify the City, in writing within five (5) days of  
20 the date on which Motorola first knew or should have known by  
21 exercise of due diligence of such event. The notice shall describe  
22 in detail the anticipated length of time the violation may persist,  
23 the precise cause or causes of the violation, the measures taken or  
24 to be taken by Motorola to prevent or minimize the violation and  
25 the timetable by which those measures will be implemented.  
26 Motorola shall adopt all reasonable measures to avoid or minimize

1 any such violation. Failure by Motorola to comply with the notice  
2 requirements of this section 2.10 shall render this section void  
3 and of no effect as to the particular incident involved, and shall  
4 constitute a waiver of Motorola's right to obtain an extension of  
5 time for its obligations under this section based on such incident.

6 If the parties agree that the violation has been or will  
7 be caused by circumstances beyond the control of Motorola and  
8 Motorola could not have foreseen and prevented such violation, the  
9 time for performance of such requirement may be extended for a  
10 period not to exceed the actual delay resulting from such  
11 circumstance, and stipulated damages shall not be due for said  
12 delay. Said circumstances shall be limited to an act of God, fire,  
13 flood, riot, strike, and failure of materials, supplies or  
14 contractor failure beyond the control of Motorola. In the event  
15 the parties are unable to agree, the matter may be submitted by  
16 either party to the Court for resolution. If the violation is then  
17 determined to have been caused by circumstances beyond the control  
18 of Motorola, Motorola may be excused as to that violation for the  
19 period of time the violation continues due to such circumstances.

20 Unanticipated or increased costs or expenses associated  
21 with the implementation of actions called for by this decree,  
22 changed financial circumstances or technical problems, shall not,  
23 in any event, serve as a basis for changes in this decree or  
24 extension of time under this decree.

25 Compliance with any requirement of this decree by itself,  
26 shall not constitute compliance with any other requirement. An

1 extension of one compliance date based on a particular incident  
2 does not result in an extension of a subsequent compliance date or  
3 dates. Motorola must make an individual showing of proof regarding  
4 each delayed incremental step or other requirement for which an  
5 extension is sought.

6 Motorola shall bear the burden of proving that any delay  
7 was caused by circumstances beyond its control.

8 Phoenix reserves any and all legal and equitable remedies  
9 available to enforce the provisions of this decree and law.

10 2.11 This Consent Decree and Settlement Agreement is not  
11 and shall not be interpreted to be a permit issued under Chapter 28  
12 of the Phoenix City Code and any new permit or a modification of an  
13 existing permit must be complied with in accordance with applicable  
14 law.

15 2.12 The parties agree that it is the responsibility of  
16 Motorola to achieve and maintain complete compliance with its  
17 Pretreatment Permit and Chapter 28 of the Phoenix City Code, and  
18 that compliance with this decree shall be no defense to any action  
19 commenced pursuant to said permit and law.

20 2.13 Phoenix does not waive any rights or remedies  
21 available to it for any violation of City law or permit conditions  
22 following completion of the requirements of this Consent Decree and  
23 Settlement Agreement.

24 2.14 Upon receipt of the Forty-Six Thousand Six Hundred  
25 and Forty Dollars (\$46,640), and the satisfactory completion of all  
26 conditions of this Consent Decree by Motorola, Phoenix shall

1 immediately cause City of Phoenix v. Motorola, Inc., Superior Court  
2 Case No. CV 89-18573, to be dismissed with prejudice, each party to  
3 bear its own costs and fees.

4           2.15 The provisions of this Consent Decree and Settlement  
5 Agreement shall be severable, and should any provision be declared  
6 by a court of competent jurisdiction to be inconsistent with  
7 Federal or State law, and therefore unenforceable, the remaining  
8 provisions shall remain in full force and effect.

9           2.16 The Court shall retain jurisdiction to enforce the  
10 terms and conditions of this Consent Decree and Settlement  
11 Agreement and to resolve disputes arising hereunder as may be  
12 necessary or appropriate for the construction or execution of this  
13 Consent Decree and Settlement.

14           2.17 In the event any party hereto finds it necessary to  
15 employ legal counsel to bring an action at law or other proceeding  
16 against any other party to enforce any of the terms, covenants or  
17 conditions hereof, the party prevailing in such action or  
18 proceeding shall be paid all reasonable attorneys' fees by the  
19 other party, and in the event any judgment is secured by such  
20 prevailing party, all such attorneys' fees shall be included in any  
21 such judgment in such action or proceeding. The amount of  
22 reasonable attorneys' fees shall be determined by the Court and not  
23 by a Jury.

24           2.18 The persons executing this Consent Decree and  
25 Settlement Agreement expressly represent and warrant that they are  
26 authorized to execute the same. Further, the parties expressly



1 acknowledge that they, and each of them, have been represented by  
2 their respective attorneys in connection with the preparation and  
3 execution of this Consent Decree and Settlement Agreement, and the  
4 terms, conditions and provisions of this Consent Decree and  
5 Settlement Agreement shall be construed only according to their  
6 fair import.

7 2.19 The parties agree that each of them shall do such  
8 further action and execute such further documents, if any, which  
9 may be necessary or appropriate to implement this Consent Decree  
10 and Settlement Agreement according to its terms.

11 2.20 This Consent Decree and Settlement Agreement shall  
12 be governed by the laws of the State of Arizona, and all actions  
13 under it shall be brought in Maricopa County, Arizona.

14 IN WITNESS WHEREOF, the parties have executed this Consent  
15 Decree and Stipulation Agreement this 11<sup>th</sup> day of July, 1989.

16 CITY OF PHOENIX

MOTOROLA, INC.

17 Matthew Palenica  
18 By: Matthew Palenica  
19 Attorney for Plaintiff

20 Edward D. Coffey  
21 By: Edward D. Coffey  
22 Attorney for Defendant,  
23 Motorola, Inc.

20 Approved:

Approved:

22 BY: Michael Gintak  
23 For City of Phoenix as  
24 Director of Water and  
25 Wastewater Department

22 BY: William L. Kulin  
23 For Motorola, Inc.  
24 as VICE PRESIDENT AND DIRECTOR  
25 GROUP SUPPORT OPERATIONS

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ORDER

IT IS SO ORDERED this 14<sup>th</sup> day of July, 1989.

MICHAEL D. RYAN  
Judge of the Superior Court

(1348M)



# City of Phoenix

WASTEWATER OPERATIONS

## EXHIBIT A

### Compliance Schedule for

**Motorola, Inc.**  
5005 East McDowell  
Phoenix, Arizona 85008

2301 West Durango  
Phoenix, Arizona 85009  
602-262-7481

<u>Required Completion Date</u>	<u>Item</u>
08/30/89	1. Identify, list by area, and give volume of flows to sewer.
08/30/89	2. Construction schedule with dates for relocation and refurbishment of flow monitoring vault.
08/30/89	3. Final decision as to the exact nature of the plating shop operations is to be submitted to the City. Should the decision result in partial or total cessation of plating operations, the compliance schedule previously prepared on February 10, 1989, and received by the City on February 15, 1989 is to be revised. Any revised schedule is to be submitted for the City's approval on August 30, 1989.
08/30/89	4. Submit receipts for improvements to metal finishing process, for period of April 1, 1988 to March 31, 1989. If consultants were retained include a "scope of services."
08/30/89	5. Submit in writing the status of converting basement to a containment area, and improvements made to the spill trench drain system behind "J" line.